

DEC 12 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL E. ASHBY,

Petitioner - Appellant,

v.

ALICE PAYNE,

Respondent - Appellee.

No. 02-35865

D.C. No. CV-02-05233-FDB/JKA

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Michael E. Ashby appeals pro se the district court's judgment dismissing without prejudice his 28 U.S.C. § 2254 petition for failure to exhaust. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court dismissed Ashby's 28 U.S.C. § 2254 petition without prejudice because it found that the petition contained only unexhausted claims. On appeal, Ashby has not provided argument or documents demonstrating that the district court erred in its ruling. Accordingly, we affirm. *See* 28 U.S.C. § 2254(b)(1); *Rose v. Lundy*, 455 U.S. 509, 520 (1982) (habeas petitions should be dismissed if the state remedies had not been exhausted as to any of the federal claims).

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

AFFIRMED.